

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Serial No. 77/770,532  
Mark: "SPRINKLESMOBILE"  
International Class: 35  
Filed: June 29, 2009  
Published: March 2, 2010

|                                  |   |                |
|----------------------------------|---|----------------|
| Soft Serve, Inc. d/b/a Sprinkles | ) |                |
|                                  | ) |                |
|                                  | ) |                |
|                                  | ) |                |
| vs.                              | ) | Opposition No. |
|                                  | ) |                |
|                                  | ) |                |
| Sprinkles Cupcakes, Inc.         | ) |                |
|                                  | ) |                |
|                                  | ) |                |
| Applicant.                       | ) |                |

NOTICE OF OPPOSITION

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313

Sir:

Soft Serve, Inc. d/b/a Sprinkles (hereinafter "Sprinkles" or "Opposer"), a Maryland corporation, located and doing business at 10148 River Road, Potomac, Maryland 20854, believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes same.

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As grounds of Opposition, it is alleged that:

1. Opposer Sprinkles has, for many years, and long prior to the filing date of U.S. Trademark Application Serial No. 77/770,532, used and has continued to use “SPRINKLES” in connection with various goods and services, including ice cream, frozen yogurt, baked goods, candy and sweets, and retail sales services and catering services in connection with the sale of such goods.
2. Opposer Sprinkles has used the mark “SPRINKLES” in the United States in connection with its various goods and services since at least as early as November 2002.
3. Opposer Sprinkles uses “SPRINKLES” as a part of its trade name under which it provides goods and services.
4. Opposer Sprinkles has used, without interruption or abandonment, “SPRINKLES” as a mark and trade name since at least as early as November 2002.
5. Opposer Sprinkles’ use of “SPRINKLES” as a mark and trade name, predates Applicant’s filing date and any use by Applicant of “SPRINKLESMOBILE”.
6. Substantial secondary meaning in “SPRINKLES” has been established due to its long and widespread use and promotion by Opposer as a trademark, service mark, and trade name. The mark “SPRINKLES” is a symbol of considerable good will and recognition built up by Opposer through substantial amounts of time and effort.
7. Applicant, Sprinkles Cupcakes, Inc., is the owner of U.S. Trademark Application Serial No. 77/770,532 for the mark “SPRINKLESMOBILE” for use in connection

with retail store services featuring baked goods; mobile retail store services for the sale of baked goods from a custom vehicle in International Class 35.

8. Applicant's "SPRINKLESMOBILE" mark so resembles Opposer's mark and trade name as identified above in significance, general appearance, commercial impression, and verbal identification so as, when used on or in connection with Applicant's recited services, to be likely to cause confusion, to cause mistake, and to deceive.
9. On information and belief, the services recited in Applicant's '532 application are offered and/or are to be offered in the same channels of trade as the goods and services offered by Opposer.
10. On information and belief, Opposer avers that the registration of the mark of U.S. Trademark Application Serial No. 77/770,532 would work to Opposer's disadvantage and would harm and damage Opposer in that the goodwill attached to the "SPRINKLES" mark and trade name of Opposer would likely be extended to Applicant without Opposer's consent, thereby benefiting Applicant rather than Opposer.
11. Opposer would be damaged through the issuance of a registration for "SPRINKLESMOBILE" to Applicant which includes Applicant's recitation of services, as such registration would provide *prima facie* evidence of Applicant's right to use and have registered to it a mark which would falsely suggest a connection between Applicant and Opposer.
12. On information and belief, Opposer avers that in the eyes and minds of a large part of the public, the mark "SPRINKLESMOBILE" as recited in U.S. Trademark

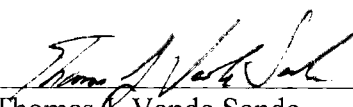
Application Serial No. 77/770,532 is closely associated with the goods and services with which Opposer has used and is using "SPRINKLES"; that Applicant's use of the mark "SPRINKLESMOBILE" in connection with the services recited in the '532 application creates or will create a likelihood of confusion and creates or will create a likelihood of deception of the public by causing the public, upon seeing "SPRINKLESMOBILE" so used, to believe that Applicant's goods and services are in reality Opposer's goods and services, or goods or services offered and/or sold by Opposer or offered under the sponsorship, control or direction of Opposer; that such is likely to interfere with or embarrass Opposer; and that registration of the mark of U.S. Trademark Application Serial No. 77/770,532 will result in damage to Opposer and confusion and deception of the public.

WHEREFORE, Opposer prays that said U.S. Trademark Application Serial No. 77/770,532 be rejected and that no registration be issued to Applicant for its mark, and that this Notice of Opposition be sustained in favor of Opposer.

Respectfully submitted,

HALL & VANDE SANDE, LLC

Date: 6/30/10

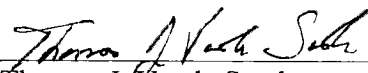
  
\_\_\_\_\_  
Thomas G. Vande Sande  
Attorneys for Opposer  
10220 River Road, Suite 200  
Potomac, Maryland 20854  
(301) 983-2500

CERTIFICATE OF SERVICE

The undersigned, Thomas J. Vande Sande, attorney for Opposer hereby certifies that one (1) copy of the foregoing "NOTICE OF OPPOSITION" was this day served on Applicant by mailing same, first class mail, to:

Hollis Beth Hire  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050

Date: 6/30/10

  
\_\_\_\_\_  
Thomas J. Vande Sande  
HALL & VANDE SANDE, LLC  
Attorneys for Opposer  
10220 River Road, Suite 200  
Potomac, Maryland 20854  
(301) 983-2500

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant: Sprinkles Cupcakes, Inc.

Mark: Serial No. 77/770,532 for "SPRINKLESMOBILE"

TRANSMITTAL OF NOTICE OF OPPOSITION

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313

RECEIVED  
2010 JUN 30 PM 4:01  
TRADEMARK TRIAL AND APPEAL BOARD  
UNITED STATES PATENT AND TRADEMARK OFFICE

Sir:

Enclosed herewith please find the following items:

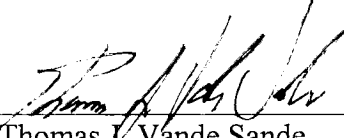
- (1) Notice of Opposition - Original and 1 copy
- (2) Transmittal and 1 copy
- (3) Check

Enclosed herewith please find a check for \$300 to cover the cost of filing a Notice of Opposition in Class 35 only for the above-identified subject matter. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-4169. A duplicate of this letter is attached.

Respectfully submitted,

HALL & VANDE SANDE, LLC

By:

  
Thomas J. Vande Sande  
Attorneys for Opposer  
10220 River Road, Suite 200  
Potomac, Maryland 20854  
(301) 983-2500

Date:

6/30/10



06-30-2010

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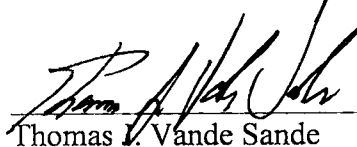
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